

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JESUS D. FUENTES :
v. : C.A. No. 23-00379-WES
WAYNE T. SALISBURY, JR. :
:

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before the Court is the Application to Proceed Without Prepayment of Fees and Affidavit filed by Jesus D. Fuentes. (ECF No. 26). Plaintiff seeks in forma pauperis status for purposes of an appeal.

Federal Rule of Appellate Procedure 24 sets forth the steps a litigant must take to obtain approval to appeal IFP. Fed. R. App. P. 24(a) requires a litigant seeking IFP status on appeal to provide the District Court with an affidavit that (1) demonstrates the party's inability to pay in the detail prescribed by Form 4 of the Appendix of Forms; (2) claims an entitlement to redress; and (3) states the issues that the party intends to present on appeal.

Plaintiff has demonstrated his inability to pay and filed a "Notice of Appeal" which satisfies the second and third requirements of Fed. R. App. P. 24(a). Nevertheless, I recommend that his Motion to Appeal IFP be DENIED because the appeal is without merit. Plaintiff's right to appeal IFP is governed by 28 U.S.C. § 1915 which provides that, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "Because the good faith standard is an objective one, an appeal is deemed not taken in good faith if the issues presented are frivolous....An appeal is considered frivolous when it is based

on an ‘indisputably meritless legal theory or factual allegations that are clearly baseless.’” Lyons v. Wall, C.A. No. 04-380-T, 2007 WL 2067661 at *1 (D.R.I. July 13, 2007) (internal citations omitted). In the present case, the Motion for Certificate of Appealability was denied by District Judge William E. Smith because Mr. Fuentes “failed to make a substantial showing of the denial of a constitutional right as to any claim, as required by 28 U.S.C. § 2253(c)(2).” (ECF No. 22 at p. 18). He has still failed to make such a showing. Because the Court has determined that Mr. Fuentes is not entitled to appeal at all, he is not entitled to appeal IFP, and I recommend his Motion be DENIED.

Any objections to this Report and Recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen days of service of this Report and Recommendation. See Fed. R. Civ. P. 72(b); DRI LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court’s decision. See Brenner v. Williams-Sonoma, Inc., 867 F.3d 294, 297 n.7 (1st Cir. 2017); Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
November 22, 2024